SECURICOR (M) SDN. BHD. JOHORE BAHRU

v.

MOHD. LAZI KATAN

HIGH COURT MALAYA, JOHOR BAHRU
ABU MANSOR ALI J
[CIVIL APPEAL NO. 16-4A OF 1987]
27 APRIL 1989

LABOUR LAW: *Appeal from decision of Labour Court - Sections 14, 69 of the Employment Act, ss. 33 and 56 of the IRA - Claim for arrears of salary after dismissal - Award made pursuant to former award of Industrial Court - Whether excess of jurisdiction - Whether Labour Officer had jurisdiction.*

The respondent was employed by the appellant as a security officer. On 29 December 1985 the respondent whilst on duty was found to have committed a serious misconduct - he was found with a lady whilst on duty. An inquiry was held and the respondent was dismissed on 1 January 1986 under s. 14 of the Employment Act since it was a result of a disciplinary action.

The respondent then lodged a report with the Labour Office under s. 69(1) of the Employment Act on 9 July 1986. The Kluang Labour Office held an inquiry and ordered that appellant to pay to the respondent RM485 in compliance with Award No. 50 of 1986 dated 8 March 1986.

On appeal, the appellant argued that:

(i) the Labour Officer ("LO") was usurping the function of the Director General of the Ministry of Labour ("the DG") and the Industrial Court. As ss. 20 and 26 of the IRA had made specific provision in relation to dismissal cases and by *Nylex (M) Sdn. Bhd. v. Alias Bin Chek* approved by the Supreme Court in *Rajaretnam a/1 Palaniandy v. Amalgamated Properties & Industries* the power of the LO under s. 69 is limited to disputes in relation to the payment of wages;

(ii) the LO had no jurisdiction to make the award in light of ss. 33 and 56 of the IRA - these are specific provisions for interpretation and enforcement of awards by the Industrial Court. The LO therefore could not usurp the function of the DG and the Ministry of Labour.

Award No. 50 applies to all employees in the security service including the respondent.

Held:

[1] If the inquiry held by the Labour Officer is with the specific purpose of determining the validity of the dismissal of the employee then the Labour Officer should cease to deal with the same.

[2] The 1st ground of appeal must fail as the Labour Officer only dealt with the last of the 3 heads of claim, the 1st 2 being related to the question of dismissal, the last was in relation to the arrears of pay.

[3] The appellant succeeds on the 2nd ground as in deciding that the employer was liable under Award No. 50 he was usurping the function of the Industrial Court for it is clear that for the respondent to claim he must come under either ss. 33 or 55 of the Industrial Relations Act 1967.

[Appeal allowed.]

Case referred to:
Nylex (M) Sdn. Bhd. v. Alias Bin Chek [1985] CLJ (Rep) 602

Legislation referred to:
Employment Act 1955, ss. 14, 69(1)
Industrial Relations Act 1967, ss. 20, 26, 33, 56

For the appellant - T.M. Varughese; M/s. T.M. Varughese & Co.
For the respondent - in person

JUDGMENT

Abu Mansor Ali J:

The appellant appeals against the decision of the Labour Court Kluang. Having heard arguments, I reserved judgment to a date to be fixed. I now give my judgment as follows.

The facts of this case are that the appellant is a company engaged in providing security service to customers. From 3 February 1982 appellant employed the respondent as a security officer in the Batu Pahat Office. On 1 January 1985 the respondent was duly transferred to their Kluang Branch at his request. On 29 December 1985 the respondent while on duty was found to have committed a serious misconduct, the substance of which was that the respondent was found to be with a lady in the company premises whilst he was on duty. He was subsequently called to the appellants' Johore Bahru Office. There was an enquiry by the company after which he was dismissed on 1 January 1986. The dismissal was under s. 14 of the Employment Act 1955 since it was as a result of a disciplinary action on the respondent.

After his dismissal, the respondent then lodged a complaint to the Kluang Labour Office under s. 69(1) of the Employment Act 1955 on 9 July 1986. The Kluang Labour Office held an enquiry and made a decision and made an order on 2 October 1986 in Borang C arrears of pay to the respondent for RM485 in purported compliance with Award No. 50 of 1986 dated 8 March 1986.

The first ground of appeal by the appellant was that since the Labour Officer knew or must have known that the complaint of the respondents was arising out of a dismissal for misconduct and not a claim for wages as such the holding of the inquiry by the Labour Officer was therefore usurping the function of the Director General of the Ministry of Labour and of the Industrial Court. Such inquiry was done without the Labour Officer having jurisdiction since s. 20 and s. 26 of the Industrial Relations Act 1967 had made specific provisions in hearing complaints in all dismissal cases whether for members or non-members of a trade union. Counsel therefore submitted that the Labour Officer entering into inquiry on the respondent's complaint and making a subsequent order, was therefore doing so without jurisdiction. He cited the case of *Nylex (M) Sdn. Bhd. v. Alias Bin Chek* [1985] CLJ (Rep) 602 where Justice Dato Harun Hashim (as he then was) held that the power of the Director General (including the Assistant Director) under s. 69 is limited to matters concerning wages only and the words "any dispute" in the section must be read conjunctively with the words "to pay any wages due". The Assistant Director then should cease to deal with the matter when he realised it was a dismissal under s. 14(1)(a) a matter already left out of s. 69(3) of the said Act. Counsel also cited *Rajaretnam a/l Palaniandy v. Amalgamated Properties & Industries*, Supreme Court Appeal No. 158 of 1986 where the decision in *Nylex (M) Sdn. Bhd. v. Alias bin Chek* (*supra*) was approved.

With respect, I find the appellant has not succeeded on this point. This Court is bound by the authority of *Rajaretnam a/l Palaniandy v. Amalgamated Properties & Industries* above only if the inquiry held by the Labour Officer under s. 69(1) Employment Act 1955 is with the specific purpose of determining the validity of the dismissal of the employee by the employer. This matter before me although it arose out of a complaint as a result of a dismissal under s. 14(a) Employment Act 1955, it is nonetheless clear to me that the claim of the appellant before the Director of Labour was for 3 items:

1. Gaji ganti notis	RM 390.00
2. Faedah penamatan kerja	RM 389.99
3. Tunggakan gaji bagi tahun 1984-1985	RM 800.00
	RM1,579.99
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Following the case of *Nylex (M) Sdn. Bhd. v. Alias bin Chek* (*supra*) and the case of *Rajaretnam a/l Palaniandy v. Amalgamated Properties & Industries* (*supra*) I have no hesitation to say that the Labour Officer has no jurisdiction to decide items 1 and 2 but he in fact decided on item 3 after dismissing items 1 and 2:

> Saya dari itu memerintahkan Pihak Kena Tuntut membayar kepada sipengadu tunggakan perbedzaan gaji berjumlah RM485 sebagaimana yang dituntut mengikut Award No. 50 of 1986.

Later on the Officer said he was satisfied with the dismissal and held:

> Dari itu saya membuat keputusan supaya tuntutan sipengadu untuk menuntut gaji ganti notis dan faedah penamatan kerja dibuang.

It is clear therefore that to say that the Director of Labour decided, for the purpose of this appeal, the validity of the dismissal of the respondent is not quite accurate. He in fact decided on a claim to wages.

With respect, I find the appellant has not succeeded in his 1st ground of appeal because what was decided by the Director apart from dismissal was also a question of wages in the form of difference of pay in accordance with the terms of Award No. 50 of 1986. The question is, can the Director of Labour make such a decision.

That question is also the foundation of appellant's 2nd ground of appeal. Counsel contended that on this ground as well the Director of Labour had no jurisdiction to make the award as his doing so is in disregard of s. 33 and s. 56 of the Industrial Relations Act 1967:

> 33. (1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the Court for a decision on the question.
>
> (2) The Court may, upon the application of any party, by order vary any of the terms of an award, if it considers it desirable so to do for the purpose solely of removing ambiguity or uncertainty.
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> (3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard.
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> (4) The decision of the Court shall be binding in the same manner as the original award or agreement.
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> (5) The expression "Court" for the purpose of this section, means the Court by which the award was made or any other Court specially constituted under s. 22 for the purpose.

Then s. 56 of the Industrial Relations Act 1967 provides:

56. (1) Any complaint that any term of any award or of any collective agreement which has been taken cognizance of by the Court has not been complied with may be lodged with the Court in writing by any trade union or person bound by such award or agreement.

(2) The Court may, upon receipt of the complaint:

(a) make an order directing any party

(i) to comply with any term of the award or collective agreement; or

(ii) to cease or desist from doing any act in contravention of any term of the award or collective agreement;

(b) make such order as it deems fit to make proper rectification or restitution for any contravention of any term of such award or collective agreement; or

(c) make such order as it considers desireable to vary or set aside upon special circumstances any term of the award or collective agreement.

(3) Any person who fails to comply with an order of the Court under sub-section (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit, or to imprisonment for a term not exceeding one year, or to both, and a further fine of five hundred ringgit for every day during which such offence continues.

(4) Where any sum of money is payable by any person by virtue of an order made by the Court under sub-section (2), and such sum has not been paid, and the person to whom the order is directed has been convicted under sub-section (3), the Court before which the conviction was had may order that such sum or any part thereof remaining unpaid be recovered as if it were a fine, notwithstanding that the said sum may be in excess of the ordinary jurisdiction of such Court.

(5) Where anything, other than the payment of a sum of money, is required to be done or not to be done by any person by virtue of any order made under sub-section (2), and the person to whom the order is directed has been convicted under sub-section (3), the High Court or a Sessions Court may on the application of any person having an interest in the thing which is so required to be done or not to be done enforce compliance with the order in respect thereof as if it were an order of the High Court or the Sessions Court, as the case may be, in accordance with such rules of Court as may be applicable or in such manner as it may deem just or expedient.

Counsel submitted that since there is a specific provision for interpretation of an award under s. 33 by the Industrial Court and its enforcement under s. 56 thereof, the Director of Labour was therefore without jurisdiction when he made the order complained of. In doing so, he was usurping the function of the Minister of Labour and the Director General of Industrial Relations.

With respect of this 2nd ground of appeal the appellant has succeeded. Mr. Varughese from the Bar made a statement that Award No. 50 applies to all employees in the security services including the respondent. I agree with his submission that the Director in hearing this matter and deciding that the employer was liable to pay under Award No. 50 was usurping the function of the Industrial Court for it is clear to me that the respondent in order to claim must come under either s. 33 (in respect of interpretation of an award) or under s. 56 (complaint of non-compliance with an award) of the Industrial Relations Act 1967. He would have to go to the Industrial Court for the award he obtained from the Labour Officer.

For the reason I gave, I therefore allow this appeal and set aside the decision of the Director of Labour with costs to be taxed.

Also found at [1989] 2 CLJ 483